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WASHINGTON, DC 20004

EXAMINER
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TO, TUAN C

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

1 RECORD OF ORAL HEARING

2  
3 UNITED STATES PATENT AND TRADEMARK OFFICE

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5  
6 BEFORE THE BOARD OF PATENT APPEALS  
7 AND INTERFERENCES

8  
9  
10 Ex parte THOMAS LENZ, JURG MOLLENHOFF  
11 and OTOMAR STRUWE

12  
13  
14 Appeal 2006-3298  
15 Application 09/618,853  
16 Technology Center 3600

17  
18  
19 Oral Hearing Held: November 15, 2007

20  
21  
22  
23 Before TERRY J. OWENS, MURRIEL E. CRAWFORD, JENNIFER D.

24 BAHHR, Administrative Patent Judges

25  
26 ON BEHALF OF THE APPELLANT:

27  
28 DAVID J. BALTAZAR, ESQUIRE  
29 Proskauer Rose, LLP  
30 1001 Pennsylvania Avenue, NW  
31 Suite 400 South  
32 Washington DC 20004

33  
34 The above-entitled matter came on for hearing on Thursday, November 15,  
35 2007, commencing at 9:15 am, at The U.S. Patent and Trademark Office,  
36 600 Dulany Street, Alexandria, Virginia, before Deborah Rinaldo, Notary  
37 Public.

1 PROCEEDINGS  
2

3 MR. BALTAZAR: Good morning, Your Honors. My name is David  
4Baltazar. I'm from the law firm of Proskauer Rose here on appeal from final  
5rejection for application serial number 09/618,853.

6 At issue is whether claims 1 through 9 of the instant application are  
7anticipated under 35 USC 102(a) by U.S. patent number 5,884,719 to  
8Schramm, et al., which I'll refer to hereafter as the Schramm patent.

9 Of the nine claims at issue, claim 1 is the only independent with  
10claims 2 and 9 depending directly or indirectly from claim 1.

11 It is submitted as it has been argued in the responses to the office  
12actions and within the appeal brief and reply brief, the Schramm patent fails  
13to show or describe each and every feature of the claimed invention.

14 The invention is generally directed to systems and methods for  
15adjusting the normal slip drive value in the rear wheels of a vehicle -- rear  
16driven wheels of a vehicle, excuse me.

17 Claim 1 recites, In a vehicle equipped with an ASR system and  
18operating in a rear drive vehicle mode, a method for adjusting the normal  
19drive slip value of the ASR system comprising, (a), evaluating dynamic  
20values associated with the front wheels of the vehicle, and (b), if the  
21dynamic values associated with the front wheels exceed a threshold value  
22increasing the normal drive slip value of the rear wheels.

23 The appeal and reply briefs detail the differences between the claimed  
24invention and the Schramm patent and further details how the Schramm  
25patent fails to show or describe or teach all of the claimed limitations.

26 However, in the time I'm provided, I would like to focus on the

1examiner's specific assertions in support of the rejection and his reliance on  
2the particular text from the Schramm patent to sustain the rejection.

3       A review of this text and the lines that follow illustrate how the  
4Schramm patent fails to show or describe the claimed method and in  
5particular fails to show or describe a method for adjusting the normal slip  
6drive value of the ASR system which increasing the normal drive slip value  
7of the rear wheels if the dynamic values associated with the front wheels  
8exceed a threshold value.

9       According to the examiner at page 4 and 5 of the examiner's answer,  
10columns 3, lines 28 through 36 of the Schramm patent purportedly supports  
11his conclusion that one of ordinary skill in the art would understand the  
12passage to describe or suggest a system and method as claimed.

13       Column 3, lines 28 through 36 of the Schramm patent reads as  
14follows, quote, In the preferred exemplary embodiment the speeds of the  
15nondriven wheels are sent to reference value former 28 which calculates a  
16reference velocity  $V_{\text{sub.FZG}}$  for the drive slip control by averaging the  
17two-wheeled speed signal values.

18       In comparators 32 through 36, the speeds of the drive wheels are  
19compared with the reference velocity which has been found to determine the  
20actual drive slip at the drive wheels of the vehicle.

21       Contrary to the examiner's conclusory assertion, nowhere in this  
22passage is a method expressly or inherently described where if the dynamic  
23values associated with the front wheels exceed a threshold value increasing  
24the normal drive slip value of the rear wheels.

25       To the extent the examiner is relying on inherency, it is submitted that  
26the examiner has not provided the requisite basis in fact, technical reasoning

1or evidence to support the determination of the claim features flow from the  
2Schramm patent.

3       It is submitted that the passage cited by the examiner instead describes  
4two steps, one calculating reference velocity from the nondriven or front  
5wheels, and two, comparing the speeds of the drive or rear wheels to the  
6reference velocity to determine the actual drive slip of the rear wheels.

7       Nowhere is it shown or described in the cited passage or elsewhere in  
8the Schramm patent in which the dynamic values of the front wheels are  
9evaluated and if the values exceed a threshold value increasing the normal  
10slip value of the rear wheels.

11       With regard to adjusting the slip drive value in the Schramm patent, I  
12would point Your Honors to the lines following the passage cited by the  
13examiner in which it states columns 3, lines 32 through 52, quote, The  
14desired drive slip is determined in desired value former 62.

15       In addition to other variables affecting the drive slip, desired value  
16former 62 determines the desired slip of the drive slip control on the basis of  
17the input variables starting from a predetermined fixed value. The desired  
18slip thus determined is transmitted to comparators 40 and 48.

19       According to the invention, this desired slip is adjusted in accordance  
20with the position of the gas pedal, the engine's RPM or the driver's command  
21derived from position of the gas pedal and the engine's RPM.

22       In comparators 40, 48 the desired value is compared with the current  
23actual value and an output signal is generated when the actual value exceeds  
24the desired value by an excessive amount, that is by a certain tolerance  
25value.

26       Drive slip control at 44 receives a signal and forms an output signal

1for reducing the engine torque in accordance with the predetermined control  
2strategy such as PID so that the actual slip approaches the desired slip.

3        Thus, the Schramm patent describes adjusting the desired slip value as  
4a function of the position of the gas pedal and the engine's RPM. Again,  
5nowhere is it shown or described that the normal drive slip value of the rear  
6wheels is adjusted as a function of the front wheels.

7        Because it has not been established that the Schramm patent shows,  
8describes, teaches or suggests each and every feature of the claimed  
9invention, the rejection of the claims cannot stand.

10       Now, in claims 2 and 5 which depend from independent claim 1 are  
11patentable for the reasons I've just provided. However, it's believed that  
12claims 2 and 5 are believed to be separately patentable for other reasons in  
13view of the examiner's rejections.

14       These reasons are presented in the appeal and reply brief and are well  
15detailed. However, there are specific points to be noted with respect to  
16claim 2. Claim 2 recites, quote, Wherein the dynamic values of claim 1  
17comprised acceleration values for each of the front wheels.

18       The examiner, in an attempt to reach the claimed invention, asserts  
19that the method of Schramm which captures wheel speed of nondriven  
20wheels also purportedly inherently shows or describes the method of claim  
212.

22       I point Your Honors to the examiner's answer on page 5. In support,  
23the examiner cites to the Microsoft Bookshelf basic dictionary to define  
24acceleration as a rate change of velocity.

25       However, again, it is submitted that the examiner has not offered the  
26requisite rationale or evidence as to why the method of claim 2 necessarily

1flows from the description in the Schramm patent, as the Schramm patent  
2expressly provides for capturing wheel velocity.

3 With regard to claim 5, it was noted in a footnote in the reply brief at  
4page 4 that the examiner did not respond to arguments presented. It should  
5again be reiterated here that the Schramm patent does not show or describe  
6the methods in claim 5 which includes determining if the vehicle is traveling  
7on a curve.

8 For the reasons presented, claims 1 through 9 are patentable over the  
9Schramm patent, as we respectfully requested that the rejections be  
10withdrawn. Thank you.

11 JUDGE OWENS: Would you say that the difference between the  
12speed of the drive wheels and the reference speed is a dynamic value?

13 MR. BALTAZAR: I'm sorry, I couldn't hear the last part. The  
14difference between the speed of the --

15 JUDGE OWENS: The speeds of the drive wheels and the reference  
16velocity of the front wheel based on the front wheels is a dynamic value.

17 MR. BALTAZAR: Well, it's not the dynamic value of the front  
18wheels. It is a calculated value.

19 Again, it's a comparison between the -- if there is a value determining  
20the reference velocity from the front wheel, again, in Schramm where the  
21calculation of the -- at the front wheels to determine a reference velocity and  
22comparing them to the dynamic values at the -- excuse me, comparing to the  
23velocity of the rear wheels.

24 JUDGE OWENS: Is that a dynamic value?

25 MR. BALTAZAR: As a dynamic value?

26 JUDGE OWENS: Is that a dynamic value?

1 MR. BALTAZAR: As a calculated value, I don't believe that it would  
2be necessarily a dynamic value. It sounds like a calculated value. Again, I  
3would --

4 JUDGE OWENS: Is the reference value a dynamic value? The wheel  
5speed of the nondriven wheels.

6 MR. BALTAZAR: The reference value, a dynamic value calculated  
7from the front wheels in the Schramm patent?

8 JUDGE OWENS: Yes, is that a dynamic value?

9 MR. BALTAZAR: Again, I think that's more of a calculated -- that  
10sounds like it's a calculated value. I would point to a reference that was  
11identified in the reply brief as to an example of what would be understood to  
12be a dynamic value, one being acceleration, deceleration of wheels or wheel  
13velocity.

14 JUDGE OWENS: Well, then why wouldn't the speed of each front  
15wheel be a dynamic value?

16 MR. BALTAZAR: I believe that that is the case. I think it was stated  
17in the reply brief that -- where it says at page 5 of the reply brief, Persons  
18skilled in the art of antiskid controls would use the term dynamic values to  
19refer frequently changing values of wheel acceleration/deceleration or wheel  
20velocities.

21 JUDGE OWENS: So we have step A, evaluating dynamic values  
22associated with the front wheels. That would be the velocity of each front  
23wheel.

24 MR. BALTAZAR: If you are just talking about the wheel velocity of  
25the front wheel.

26 JUDGE OWENS: Yes, each front wheel, that would be a dynamic



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1value.

2 MR. BALTAZAR: I believe that is a dynamic value.

3 JUDGE OWENS: So we have step A in claim 1.

4 MR. BALTAZAR: I believe so. Certainly evaluating wheels --  
5evaluating wheel speed, wheel velocity.

6 JUDGE OWENS: Thank you.

7 MR. BALTAZAR: Thank you very much.

8 (Whereupon, the proceedings at 9:27 a.m. were concluded.)